

No. 21A248

IN THE  
**Supreme Court of the United States**

---

BST HOLDINGS, LLC ET AL.,  
APPLICANTS

v.

OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION,  
UNITED STATES DEPARTMENT OF LABOR,  
RESPONDENT

---

ON EMERGENCY APPLICATION FOR WRIT OF STAY  
FROM THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

---

*To the Honorable Brett M. Kavanaugh, Associate Justice  
and Circuit Justice for the Sixth Circuit*

---

**APPLICANTS' SUPPLEMENTAL BRIEF  
IN SUPPORT OF EMERGENCY APPLICATION**

---

Daniel R. Suhr  
*Counsel of Record*  
M. E. Buck Dougherty III  
Liberty Justice Center  
141 W. Jackson Blvd., Ste. 1065  
Chicago, IL 60604  
Telephone: 312-637-2280  
dsuhr@libertyjusticecenter.org  
bdougherty@libertyjusticecenter.org

Sarah Harbison  
Pelican Institute for Public Policy  
400 Poydras St., Ste. 900  
New Orleans, LA 70130  
Telephone: 504-952-8016  
sarah@pelicaninstitute.org

*Attorneys for Applicants BST Holdings, LLC; RV Trosclair L.L.C.; Trosclair Airline LLC; Trosclair Almonaster LLC; Trosclair and Sons LLC; Trosclair & Trosclair, Inc.; Trosclair Carrollton LLC; Trosclair Claiborne LLC; Trosclair Donaldsonville, LLC; Trosclair Houma LLC; Trosclair Judge Perez LLC; Trosclair Lake Forest LLC; Trosclair Morrison LLC; Trosclair Paris LLC; Trosclair Terry LLC; Trosclair Williams LLC; Ryan Dailey; Jasand Gamble; Christopher L. Jones; David John Loschen; Samuel Albert Reyna; and Kip Stovall*  
[additional counsel on next page]

Matthew R. Miller  
Robert Henneke  
Chance Weldon  
Nate Curtisi  
Texas Public Policy Foundation  
901 Congress Ave.  
Austin, TX 78701  
Telephone: 512-472-2700  
*Attorneys for Applicants Burnett Specialists; Choice Staffing, LLC; Staff Force Inc.;  
and LeadingEdge Personnel, ltd.*

Gene P. Hamilton  
Vice President & General Counsel  
America First Legal Foundation  
300 Independence Ave. SE  
Washington, DC 20003  
Telephone: 202-964-3721  
R. Shawn Gunnarson  
Kirton McConkie  
36 S. State St., Ste. 1900  
Salt Lake City, UT 84111  
Telephone: 801-328-3600  
*Additional Counsel for Applicant LeadingEdge Personnel Services, Ltd.*

January 7, 2022

**SUPPLEMENTAL BRIEF**

In their Emergency Application for Writ of Stay, Applicants told the Court that, as of December 18, 2021, six different courts had issued seven different decisions examining the five Executive Branch COVID-19 vaccine mandates and found that the agencies charged with enforcing them did not possess the statutory or constitutional authority to do so. Emer. App. 3. Applicants file this Supplemental Brief to alert the Court that the correct figure is now eleven different decisions have found that the COVID-19 vaccine mandates announced by President Joe Biden on September 9, 2021 violate statutes or the constitution of the United States. *See Kentucky v. Biden*, No. 21-6147, 2022 U.S. App. LEXIS 267 (6th Cir. Jan. 5, 2022) (enjoining the federal contractor mandate), *aff'g Kentucky v. Biden*, No. 3:21-cv-00055-GFVT, 2021 U.S. Dist. LEXIS 228316 (E.D. Ky. Nov. 30, 2021); *Georgia v. Biden*, No. 21-14269 (11th Cir. Dec. 17, 2021) (same), *aff'g Georgia v. Biden*, No. 1:21-cv-00163, 2021 U.S. Dist. LEXIS 234032 (S.D. Ga. Dec. 7, 2021); *Louisiana v. Becerra*, No. 21-30734, 2021 U.S. App. LEXIS 37035 (5th Cir. Dec. 15, 2021) (enjoining the healthcare workers mandate), *aff'g Louisiana v. Becerra*, No. 3:21-cv-03970-TAD-KDM, 2021 U.S. Dist. LEXIS 229949 (W.D. La. Nov. 30, 2021); *Missouri v. Biden*, No. 21-3725, Dkt. 5107268 at 1 (8th Cir. Dec. 13, 2021) (same), *aff'g Missouri v. Biden*, No. 4:21-cv-01329-MTS, 2021 U.S. Dist. LEXIS 227410 (E.D. Mo. Nov. 29, 2021); *BST Holdings, L.L.C. v. OSHA*, 17 F.4th 604, 2021 U.S. App. LEXIS 33698, 2021 WL 5279381 (5th Cir. Nov. 12, 2021) (staying the OSHA mandate);<sup>1</sup> *Louisiana v. Becerra*, No. 3:21-CV-04370, 2022 U.S. Dist. LEXIS 1333 (W.D.

---

<sup>1</sup> *See also In re: MCP No. 165, Occupational Safety and Health Administration, Interim Final Rule: Covid-19 Vaccination and Testing; Emergency Temporary Standard* 86 Fed. Reg. 61402,

La. Jan. 1, 2022) (enjoining the Head Start mandate); *Texas v. Becerra*, No. 5:21-CV-300-H, 2021 U.S. Dist. LEXIS 248309 (N.D. Tex. Dec. 31, 2021) (same). These courts consistently reach the same conclusions: the mandates are pretextual, invade state prerogatives, are issued without good cause to evade notice-and-comment rulemaking, and address a major question of national policy that properly belongs to Congress, not agencies operating under vague statutory authorities.

Only two courts have examined these mandates on the likelihood of success on the merits and declined to issue an injunction. See *In re: MCP No. 165, Occupational Safety and Health Administration, Interim Final Rule: Covid-19 Vaccination and Testing; Emergency Temporary Standard 86 Fed. Reg. 61402*, 2021 U.S. App. LEXIS 37349 (6th Cir. Dec.17, 2021) (dissolving the 5th Circuit OSHA mandate stay); *Florida v. HHS*, No. 21-14098-JJ, 2021 U.S. App. LEXIS 35998 (11th Cir. Dec. 6, 2021) (healthcare workers mandate).<sup>2</sup> As things stand today, four of the five vaccine mandates are currently enjoined. The OSHA mandate is the last man standing. The Sixth Circuit broke with this extensive line of authority when it decided to vacate the Fifth Circuit's stay. This Court should correct that error by reinstating the stay of the OSHA vaccine mandate.

## CONCLUSION

For the foregoing reason and those set forth in the Application and Reply, this Court should grant the application for emergency relief and reinstate the stay of the OSHA Emergency Temporary Standard pending review on the merits.

---

2021 U.S. App. LEXIS 37024 (6th Cir. Dec. 15, 2021) (denying initial hearing en banc) (Sutton, C. J., dissenting) (Bush, J., dissenting).

<sup>2</sup> See also *Florida v. HHS*, No. 3:21cv2722-MCR-HTC, 2021 U.S. Dist. LEXIS 224264, at \*11 (N.D. Fla. Nov. 20, 2021) (declining to enjoin because of insufficient irreparable injury, without addressing the likelihood of success on the merits).

January 7, 2022

Respectfully submitted,

s/ Daniel R. Suhr

Daniel R. Suhr  
M. E. Buck Dougherty III  
Liberty Justice Center  
141 W. Jackson Blvd., Ste. 1065  
Chicago, IL 60604  
Telephone: 312-637-2280  
dsuhr@libertyjusticecenter.org  
bdougherty@libertyjusticecenter.org

Sarah Harbison  
Pelican Institute for Public Policy  
400 Poydras St., Suite 900  
New Orleans, LA 70130  
Telephone: 504-952-8016  
sarah@pelicaninstitute.org

*Attorneys for BST Applicants*

Matthew R. Miller  
Robert Henneke  
Chance Weldon  
Nate Curtisi  
Texas Public Policy Foundation  
901 Congress Ave.  
Austin, TX 78701  
Telephone: 512-472-2700

*Attorneys for Applicants Burnett Specialists; Choice Staffing, LLC; Staff Force Inc.; and LeadingEdge Personnel, ltd.*

Gene P. Hamilton  
Vice President & General Counsel  
America First Legal Foundation  
300 Independence Ave. SE  
Washington, DC 20003  
Telephone: 202-964-3721  
R. Shawn Gunnarson  
Kirton McConkie  
36 S. State St., Ste. 1900

Salt Lake City, UT 84111

Telephone: 801-328-3600

*Additional Counsel for Applicant LeadingEdge Personnel Services, Ltd.*